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January 28, 2015

Via Certified Mail, Return Receipt Requested

Mr. Terrell Graham Ms. Patricia Graham 18645 State Highway 239 Kenedy, Texas 78119

Gina McCarthy Administrator United States Environmental Protection Agency 1200 Pennsylvania Ave., N.W. Washington, D.C. 20460

Richard A. Hyde Executive Director Texas Commission on Environmental Quality MC 190 P.O. Box 13087 Austin, Texas 78711-3087 Mr. David Frederick Counsel for the Grahams Frederick, Perales, Allmon & Rockwell, P.C. Attorneys at Law 707 Rio Grande, Suite 200 Austin, Texas 78701

Ron Curry Regional Administrator United States Environmental Protection Agency – Region VI 1445 Ross Ave., Suite 1200 Dallas, Texas 75202

Re: Notice of Intent to Suc under the Clean Water Act 33 U.S.C. §1251 et. seq.

Dear Ladies and Gentlemen:

This letter constitutes the NOTICE OF INTENT TO SUE Terrell Graham and Patricia Graham (collectively the Grahams) for violations of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1251, et seq. Specifically, this letter gives notice to the Grahams of Noticers' intent to file suit and seek redress for the intentional placement of sediment, dirt, rock and other pollutants without a permit into and across Unnamed Tributary 21, which drains into Cibolo Creek a "water(s) of the United States" in violation of the CWA and Texas State statutes.

Re: Notice of Intent to Sue Under the Clean Water Act 33 U.S.C. §1251

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I. Persons Giving Notice

DHJB Development, LLC (DHJB) a Texas limited liability company, whose address is 808 Highway 46 E, Boerne, Texas 78006. DHJB owns, controls and is developing approximately 480 acres of land in Comal County, Texas (aka Johnson Ranch), which lies adjacent to and immediately upstream of property owned by the Grahams.

II. Person(s) Responsible for and the location of the CWA Violations

The Grahams own approximately 52.454 acres of land in Comal County, Texas (the Graham Property). Terrell Graham without obtaining the necessary permits or approval from Federal and State agencies constructed a dam (the Graham Dam) across Unnamed Tributary 21, located adjacent to and immediately downstream of Johnson Ranch. See Exhibit A. The Graham Dam has since mostly washed away dispersing and discharging sediments, soil, rock and other pollutants throughout "waters of the United States" in violation of the CWA. In addition the Grahams have dumped trash (used oil filters, rusting appliances and other waste) in and along the banks of Unnamed Tributary 21 where it presents and ongoing threat to "waters of the United States". See Exhibit B.

III. CWA Violations

Pursuant to sections 505(a) and (b) of the CWA, 33 U.S.C. §§ 1365 (a)-(b), Noticers intend to sue the Grahams for violating, and continuing to violate, effluent standards and limitations as defined under section 505(f) of the CWA, 33 U.S.C. § 1365(f), by discharging pollutants into the waters of the United States without a permit as required by CWA section 301(a), 33 U.S.C. §1311(a).

The CWA prohibits the discharge of pollutants from a point source to the waters of the United States except when pursuant to, and in compliance with, a permit. See 33 U.S.C. § 1311 (a); 33 U.S.C. § 1342. The CWA defines "pollutant" to include "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6). The CWA defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source" and "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft." 33 U.S.C. § 1362(12). "Point source" is defined by the CWA as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14). The Grahams have violated and continue to be in violation of the CWA.

The foregoing list of CWA violations is not exhaustive. Noticers intend to include in their lawsuit additional violations, legal or factual, revealed in the course of investigation or discovery.

¹ The State of Texas has been delegated authority by the Environmental Protection Agency to administer the Nation Pollution Discharge Elimination System ("NPDES") permit program pursuant to 33 U.S.C. § 1342(b).

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IV. Dates and Description of the CWA Violations

On or around March 12, 2014, the Grahams, specifically Terrell Graham constructed the Graham Dam across the width of Unnamed Tributary 21, which prior to construction of the dam had naturally flowed into Cibolo Creek. Unnamed Tributary 21 located approximately 125 feet downstream from the Johnson Ranch property transverses both Johnson Ranch and the Graham Property. The Graham Dam was constructed by Terrell Graham without approval or authorization from the Texas Commission on Environmental Quality, the United States Army Corps of Engineers, Comal County, or the City of Bulverde. On May 12-13, 2014, a rainfall event, of approximately two inches, occurred at Johnson Ranch and the Graham Property.

As runoff from Johnson Ranch and the Graham Property flowed from the drainage area above the Graham Dam into Unnamed Tributary 21 the natural flow and drainage of water into Cibolo was blocked by the Graham Dam. The Graham Dam caused the water flowing into the Unnamed Tributary 21 to backup and pool behind the Graham Dam. See Exhibit C. The water impounded by the Graham Dam, instead of being allowed to continue to flow along its historic natural drainage pattern downstream, led to scouring and alteration of the bed and flow line of Unnamed Tributary 21, the deposition of pollutants in Unnamed Tributary 21 and flooding on Johnson Ranch. Subsequent rainfall events have caused and will continue to cause violations of the CWA.

The existence and adverse impacts of the Graham Dam following the May 12-13, 2014, rainfall event were documented by Noticers' consulting engineer Tracy Bratton, P.E., in a May 2013, 2014 letter to Noticers' representative, Charlie Hill, and the Johnson Ranch Municipal Utility District. *See* Exhibit D.

But for the unauthorized and improper construction of the Graham Dam, which blocked the natural flow or water in Unnamed Tributary 21 into Cibolo Creek, those surface waters would have naturally flowed down the tributary and into Cibolo Creek as waters have done so in the past. The Graham Dam has caused and will continue to cause, alterations of the bed and banks of Unnamed Tributary 21, which in turn alter the natural flow of Cibolo Creek. The Graham Dam and its remnants have and will continue to cause flooding on Johnson Ranch, pose a safety hazard and permanently damage Johnson Ranch. The Grahams activities have violated and will continue to violate the CWA due to the continued presence of sediments, rocks, soil and pollutants from the Graham Dam that remain in Unnamed Tributary 21 and Cibolo Creek. The construction of the Graham Dam substantially altered the natural hydrologic patterns in Unnamed Tributary 21 and Cibolo Creek.

If, as the Grahams contend on page two of their December 9, 2014 Notice of Intent to Sue letter, "pollutants [that] are carried to nearby streams, rivers, lakes and estuaries"... "[i]ndividually and collectively ... can reduce water quality and threaten one or more designated beneficial uses of surface water"; and "storm water discharges have deleterious impacts on subsurface waters, as well, since recharge of the [Edwards Aquifer Recharge Zone] aquifer is well understood to take place with little or no filtration of contaminants and since contaminants in surface water can plug crevices and other preferential flow paths by which the aquifer is recharged", then the Grahams unpermitted and illegal construction of the Graham Dam has and will continue to cause harm to the aquifer, which harm can only be ameliorated by an injunction requiring the Grahams to remove the pollutants from Unnamed

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Tributary 21 and Cibolo Creek and to restore the bed and banks of Unnamed Tributary 21 and Cibolo Creek to their natural conditions.

As long as any part of the Graham Dam or any sediment, rock, soil or other pollutant from the Graham Dam is allowed to remain in Unnamed Tributary 21 or Cibolo Creek an imminent, ongoing and continuing harm to the "waters of the United States" and to Johnson Ranch exists.

The only remedy which will permanently address the continuing harm caused to "waters of the United States" and to DHJB is mandatory injunctive relief requiring the Grahams to remove any vestige of the Graham Dam, restore the bed and banks of Unnamed Tributary 21 and remedy the damage to Cibolo Creek caused by the Grahams' violation of the CWA.

DHJB is requesting the Court issue a permanent injunction requiring the Grahams to immediately undertake such actions to rectify the ongoing CWA violations and protect Johnson Ranch from future damages. DHJB has a probable right to relief based on the statutory prohibitions and the relief that may be granted pursuant to the CWA.

V. Request Injunctive Relief, Penalties, Attorney Fees and Costs of Suit

Noticers believe that this Notice of Intent to Sue sufficiently states grounds for filing suit under the CWA. Each day the above-described violations are not remedied constitute a separate violation under the applicable regulations. The Grahams will remain in violation of the CWA until the violations are remedied. The CWA and 40 CFR § 19.4 authorizes penalties up to \$37,500/day for each violation of the CWA. At the close of the 60-day CWA notice period, Noticers intend to file a citizen suit against the Grahams for the violations discussed above. Noticers intend to seek injunctive relief, penalties, attorneys' fees and costs, including expert witness fees.

Sincerely,

Alan M. Glen () Earl L. Hagström Sedgwick LLP

Enclosures

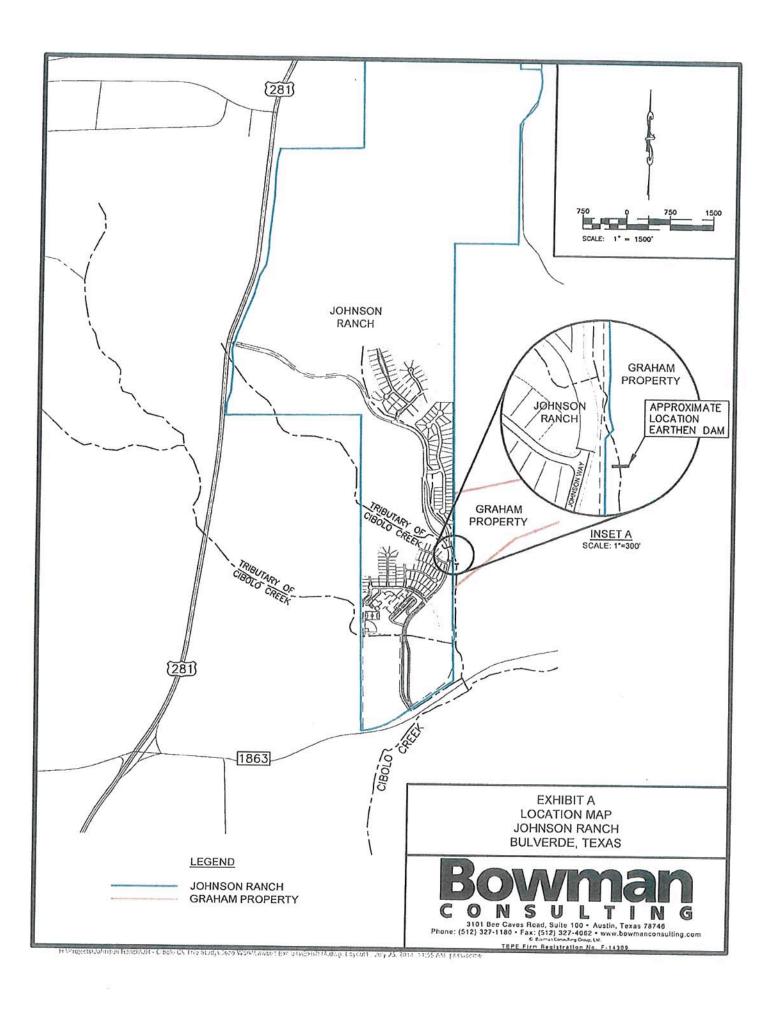




Figure F-7. Photo of school to the west of the subject property, facing west.



Figure F-8. Photo of abandoned pipes at dumpsite along west bank of the drainage.



Figure F-9. Photo of corrugated metal and overturned fiberglass boat at dumpsite along west bank of the drainage.



Figure F-10. Photo of several used vehicle oil filters at dumpsite along west bank of drainage.



Figure F-11. Photo of abandoned refrigerator, scrap/corrugated metal, and possible water heater at dumpsite along west bank of drainage.



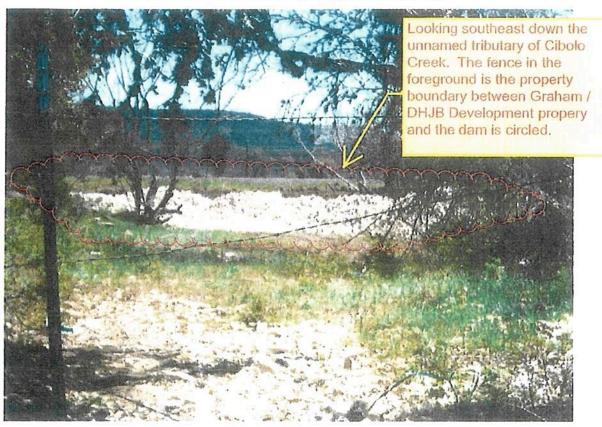
Figure F-12. Photo of abandoned dishwasher and other appliances and rusted scrap metal at dumpsite along west bank of drainage.



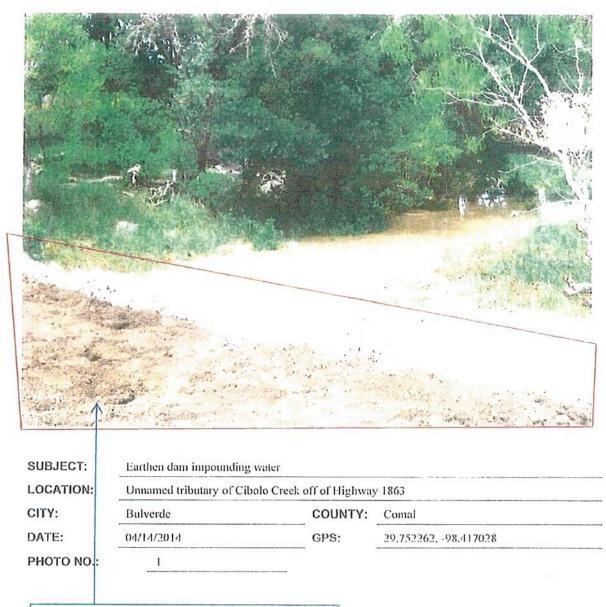
Figure F-13. Photo of miscellaneous items, such as wood, aluminum cans, metal and plastic scrap, and caulk tubes at dumpsite along west bank of drainage.



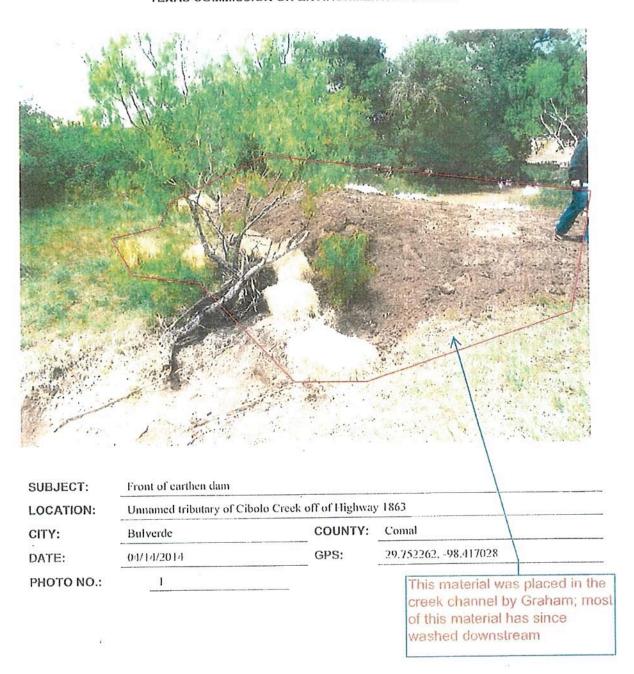
Figure F-14. Photo of the southern boundary of the subject property, facing south-southwest toward FM 1863.



SUBJECT:	Looking downstream			
LOCATION: Unnamed tributary of Cibolo Creek off of Highway 1863			y 1863	
CITY:	Bulverde	COUNTY:	Comal	
DATE:	04/14/2014	GPS:	29,752262, -98.417028	
РНОТО NO.:	2		,	

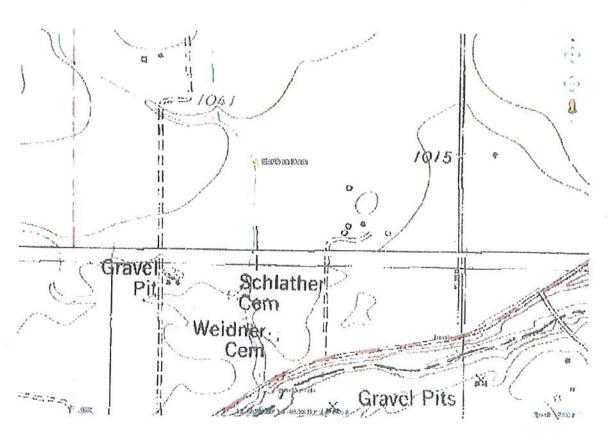


Standing on Dam (photo taken by TCEQ) looking northwest at water backing up





SUBJECT:	Satellite map of location of earthen dam			
LOCATION:	Unnamed tributary of Cibolo C	reck off of Highway	y 1863	
CITY:	Bulverde	COUNTY:	Comal	
DATE:	04/14/2014	GPS:	29,752262, -98.417028	
РНОТО NO.:	ı			



SUBJECT:	USGS topographic map	location of earthen dam	
LOCATION:	Unnamed tributary of Ci	bolo Creek off of Highway	y 1863
CITY:	Bulverde	COUNTY:	Comal
DATE:	04/14/2014	GPS:	29.752262, -98.417028
РНОТО NO.:			



May 13, 2014

Johnson Ranch Municipal Utility District c/o Phil Haag, General Council 600 Congress Avenue; Suite 2100 Austin, Texas 78701

DHJB Development LLC Charlie Hill 808 Hwy 46 E Boerne, TX 78006

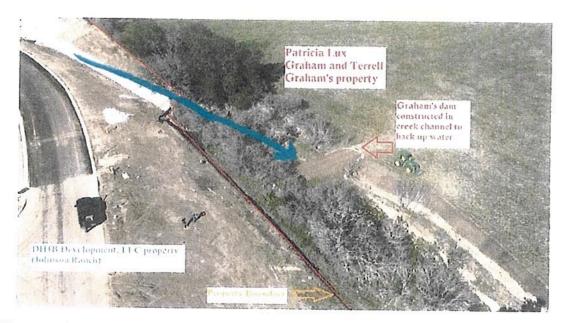
Subject: Johnson Ranch -- Channel Blockage Downstream of Channel A

To Messrs. Haag and Hill:

The majority of the southern portion of the Johnson Ranch subdivision drains to Channel A, paralleling Johnson Way, and leaves the property at a point approximately 2,100-ft north of FM 1863. In recent site visits at Johnson Ranch, I have observed that the natural channel downstream is blocked. From appearances, the downstream property owner has filled the natural channel with dirt and rock in an attempt to construct a dam to block water from leaving the Johnson Ranch property. See photo here illustrating the dam in the creek channel in relation to the property boundary:

3101 Bee Cave Road, Suite 100 Austin, TX 78746 | p: 512.327.1180 TBPE Firm No. 14309 | TBPLS Firm No. 101206-00

bassman onsulting com



We currently have no survey elevations of the dam but the location of the dam and visual observations made me believe that this blockage of the channel will impound water in the channel extending beyond the adjacent property owner's land and on to the Johnson Ranch development. This belief was confirmed with photographs taken shortly after heavy rains early on the morning of May 13, 2014 (see next page). This impoundment of water creates several practical problems for the development as well as a flooding and safety hazard. In many instances actions by a land owner causing water to back up on to an adjacent property owners land is a cause of action (damage) under the Texas Water Code.

I recommend the guidance of counsel familiar with the Texas Water Code be sought to evaluate actions required to cause this dam to be removed. Please do not hesitate to call or email me with any questions.

Regards,

Tracy A. Fratton, P.E.

Photo 1: Looking downstream at water backing up from Graham property.



Graham dam

Property boundary fence line

Photo 2: Looking downstream near property line at water backing up.

Looking downstream from fence line at Graham dam

Photo 3: Photo looking downstream at dam from property line.





Phase I Environmental Site Assessment for the Approximate 9-acre Johnson Ranch Drainage Easement Project in Bulverde, Comal County, Texas

Prepared for

Bowman Consulting

Prepared by

SWCA Environmental Consultants

July 2014

SWCA Project No. 29402

PHASE I ENVIRONMENTAL SITE ASSESSMENT FOR THE APPROXIMATE 9-ACRE JOHNSON RANCH DRAINAGE EASEMENT IN BULVERDE, COMAL COUNTY, TEXAS

Prepared for

Bowman Consulting 3101 Bee Cave Road, Suite 110 Austin, Texas 78746

Prepared by

Christine Westerman Senior Project Manager SWCA Environmental Consultants

SWCA ENVIRONMENTAL CONSULTANTS

4407 Monterey Oaks Boulevard Building 1, Suite 110 Austin, Texas 78749 (512) 476-0891 www.swca.com

SWCA Project No. 29402

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Appendix C	Banks Environmental Data, Inc. Chain-of-Title and Environmental Lien Searches
Appendix D	Landowner and User Questionnaires
Appendix E	Banks Environmental Data, Inc. Regulatory Database Report
Appendix F	Photographic Log of Subject Property
Appendix G	Qualifications of Environmental Professional

EXECUTIVE SUMMARY

SWCA Environmental Consultants (SWCA) conducted a Phase I Environmental Site Assessment (ESA) on behalf of Bowman Consulting and Johnson Ranch Municipal Utility District (MUD) for approximately 9.0 acres of agricultural upland and an intermittent drainage, northeast of Bulverde in southern Comal County, Texas, referred to throughout the remainder of this report as the subject property (Figure 1). The subject property includes portions of two parcels. Ownership information for each parcel, according to the Comal Central Appraisal District, is provided in Table ES 1.1 below.

Table ES 1.1. Subject Property Parcel Information

Property Owner
Margie Hastings Patricia Lux Grahan

The purpose of this ESA is to determine, to the extent feasible, the presence or lack of recognized environmental conditions associated with the subject property. The Phase I ESA was performed in accordance with the American Society for Testing and Materials (ASTM) E1527-13 guidance document, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. Tasks involved with the ESA included historical records and regulatory review, an on-site inspection, landowner interviews, and a reconnaissance of the surrounding area.

FINDINGS AND CONCLUSIONS

SWCA performed this Phase I ESA in conformance with the scope and limitations of ASTM Practice E1527-13 on the subject property. Any exceptions to, or deletions from, this practice are described in Section 8.6 of this report. Based upon the site reconnaissance and a review of all available data for the subject property, SWCA identified three *de minimis* conditions on the subject property. ASTM E1527-13 defines *de minimis* condition as "a condition that generally does not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies." These conditions include:

- Evidence of Dumping SWCA identified one dumpsite within the subject property adjacent to the drainage (Figure 2). Discarded materials include lumber, plywood, corrugated metal, construction debris, scraps of hard plastic, old appliances, farming equipment, fiberglass boat, metal pipes, rusted wire, concrete chunks, small, rusted motors, water heater, portable propane tank, aluminum cans, and numerous used vehicle oil filters (Figures F-8 through F-13, Appendix F). There is potential for materials in these dumpsites to contain asbestos or lead-based paint. Should future construction activities affect this dumpsite, these items should be removed and disposed of properly. This item is considered to be a de minimis condition and to have a low level of environmental risk or liability.
- Presence of Fill Material SWCA identified a washed-out earthen dam (originally approximately 20 feet long, 3 feet high, and 6 feet wide) made from what appears to be native soil mixed with limestone cobbles within the northern portion of the subject property (Figure 2; Figures F-3 and F-4, Appendix F). SWCA does not have landowner confirmation on the source of the soil and limestone materials; however, no staining, foreign debris, or potential sources of hazardous materials were observed. Should future construction activities affect this area of the subject property, this material should be removed and disposed of properly. Should future excavation of this material uncover any potentially hazardous material,

- additional investigation may be required to determine that soils have not been negatively affected. This item is considered to be a *de minimis* condition and to have a low level of environmental risk or liability.
- Runoff of Potential Contamination from Off-Site Sources SWCA identified two areas with potential to transport sediment and surface water runoff from off-site sources onto the subject property. Failed sediment control measures, or lack thereof, at the construction site at the northern end of the subject property may have allowed off-site discharges to reach the drainage within the subject property (Figure F-2, Appendix F). Also, the pre-existing stormwater drainage that flows into the subject property may transport off-site contamination onto the subject property as well. Should future construction activities affect these areas on the subject property, appropriate sediment and stormwater control measures would need to be implemented to protect the construction crews and surrounding public and prevent soil and water contamination. This item is considered to be a *de minimis* condition and to have a low level of environmental risk or liability.

No ESA can wholly eliminate uncertainty regarding the potential for recognized environmental conditions to exist in connection with a property. Completion of this Phase I ESA is intended to reduce, but not all together eliminate, uncertainty regarding the presence of recognized environmental conditions in connection with the subject property.

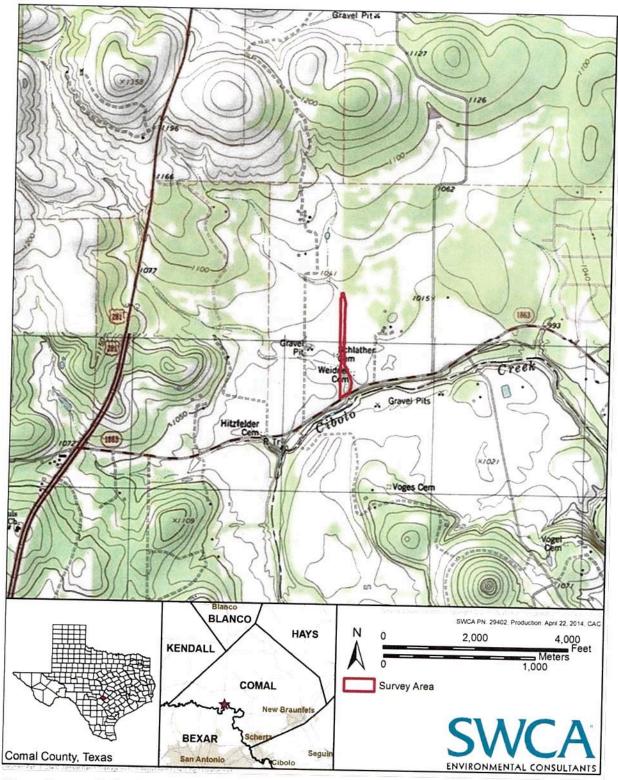


Figure 1. Project location map.



Figure 2. Results of reconnaissance.

1.0 INTRODUCTION

1.1 OBJECTIVE

This Phase I Environmental Site Assessment (ESA) was performed by SWCA Environmental Consultants (SWCA) on behalf of Bowman Consulting and Johnson Ranch Municipal Utility District (MUD) as a part of an environmental due diligence assessment of the subject property. This Phase I ESA was performed in accordance with the American Society for Testing and Materials (ASTM) E1527-13 and the contractual agreement between Bowman Consulting and SWCA. The referenced ASTM practice defines good commercial and customary practice for conducting environmental assessments of commercial real estate in the United States.

The objective of this Phase I ESA is to identify, to the extent feasible, pursuant to the practice described in ASTM E1527-13, recognized environmental conditions associated with the subject property. Recognized environmental conditions are the presence or likely presence of a hazardous substance, including petroleum products, on the subject property under conditions that indicate an existing release, past release, or a material threat of a release of any such substance into structures on the subject property. This includes the soil surface, groundwater, or surface water of the subject property. Recognized environmental conditions include hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include *de minimis* conditions. ASTM E1527-13 defines *de minimis* condition as "a condition that generally does not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies."

This ESA provides documentation of all appropriate inquiry associated with the proposed transaction to satisfy one of the requirements to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser limitations on Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability, generically known as "landowner liability protections" (LLP).

1.2 PROCEDURES AND METHODOLOGIES

SWCA used the following procedures for the ESA:

- Walk-through site inspection
- Drive-by observation of adjacent properties and site vicinity
- Regulatory agency environmental database reviews performed by Banks Environmental Data, Inc. (Banks)
- · Review of title and environmental lien search information
- · Site history/land use review
- Interviews with property owner and appropriate local, state, and federal agencies
- · Aerial photography review
- Report preparation

1.3 SIGNIFICANT ASSUMPTIONS

This ESA was completed under the following assumptions/constraints:

Records pertinent to this transaction were reasonably ascertainable.

- All relevant, publicly available records were accessed with the regulatory database search.
- Information pertaining to environmentally related property use restrictions, if any, was accessed.
- Reasonable time and cost were considered.
- Information from local governmental/owner sources is accurate.
- Surface and subsurface sampling was not conducted to identify recognized environmental conditions.
- Bowman Consulting and Johnson Ranch MUD are making a good faith effort to complete
 environmental due diligence in conjunction with utilization of the subject property as a
 drainage easement and the associated alteration.

1.4 SPECIAL TERMS AND CONDITIONS

No special terms or conditions were agreed upon by the environmental professionals that prepared this Phase I ESA. The ESA activities were conducted in accordance with the contractual agreement between Bowman Consulting and SWCA, and ASTM E1527-13 guidelines. SWCA professional judgment to assess the potential for contamination is based on limited data; no other warranty is given or implied by this report.

1.5 LIMITATIONS AND EXPECTATIONS OF ASSESSMENT

Specific to the ESA, further evidence of the presence of hazardous materials following completion of the tasks of a reasonable and mutually agreed upon scope of work does not guarantee the absence or presence of such materials. Although SWCA's proposed scope of work precludes the firm from providing a warranty or guarantee regarding the presence or absence of hazardous materials that could potentially affect the site, SWCA has provided its best professional judgment on the presence or absence of such materials and has performed the agreed upon services in accordance with the contractual agreement between Bowman Consulting and SWCA. This ESA was not performed to provide a comprehensive evaluation of business environmental risk.

1.6 USER RELIANCE

This document was prepared for the sole use of Bowman Consulting and their affiliates. No other party should rely on the information contained herein without prior written consent from SWCA and Bowman Consulting. Findings are based solely on the above referenced methods and limitations.

2.0 SITE OVERVIEW AND HISTORICAL RECORDS SEARCH

2.1 SITE LOCATION

The subject property is located in southern Comal County, northeast of Bulverde, approximately 1.14 miles northeast of the intersection of the U.S. Highway 281 and Farm-to-Market (FM) 1863 (see Figure 1). The subject property includes portions of two parcels in a rural-suburban setting surrounded by open pastures and intermittent development (see Table ES 1.1). Johnson Ranch MUD proposes to construct a narrow earthen berm adjacent to an intermittent drainage for the purposes of storm water management. The proposed earthen berm will be approximately 0.43 mile long and oriented roughly north to south on the east side of the drainage.

2.2 SITE AND VICINITY CHARACTERISTICS

The subject property is located in a historically rural area of Comal County, where the primary land use was livestock grazing. Within the last decade, both residential and commercial development has expanded in the surrounding area and continues to grow.

2.3 SITE IMPROVEMENTS

Site improvements within the subject property are minimal as there has been no human development of the subject property. Remnants of rock walls are present along the eastern bank of the northernmost and southernmost sections of the drainage within the subject property, most likely serving as a barrier between the livestock field and the drainage and bank erosion control.

2.4 CURRENT AND PRIOR USE OF ADJOINING PROPERTY

The adjoining properties are described in Table 2.1.

Table 2.1. Properties Adjacent to the Subject Property

Direction	Descriptions of Adjacent Properties
North	To the northwest of the subject property, subdivision construction is ongoing. Where land cover sti exists, there is more woodland than pasture, most likely due to the distance from Cibolo Creek to the south.
South	The southern boundary runs along FM 1863. At this location, Cibolo Creek parallels the south side of the road. Beyond the creek, land uses similar to the surrounding area are present, including pastures and woodland for grazing and agriculture.
East	The remainders of the two parcels that constitute the subject property lie to the east. They are comprised of open pasture, wooded areas, and some residential structures.
West	To the west of the subject property is Johnson Ranch Elementary School. The area surrounding the school is part undeveloped agricultural land (south) and is partly under construction as a subdivision (north).

2.5 HISTORY OF PROPERTY USE

A number of sources are typically used to determine the historical uses of a property, including historical U.S. Geological Survey (USGS) 7.5-minute topographic quadrangle maps, historical aerial photographs, chain-of-title searches, fire insurance maps, historical city directories, and landowner interviews.

USGS quadrangles are color-coded topographic maps, revised and updated periodically, that depict elevations, roads, pipelines, water bodies, buildings, and other prominent land features. Results of SWCA's review of these maps, dating back to 1929, are provided in Section 2.5.1.

SWCA reviewed available aerial photography dating back to 1955. Information gathered from the photograph review is presented in Section 2.5.2.

2.5.1 Review of USGS Topographic Quadrangles

USGS quadrangle maps were reviewed as a supplement to the historical aerial photographs and to determine the prior use or occupancy of the subject property. The dates, names, and scales of the reviewed quadrangle(s) excerpts are as follows:

- 1929, 7.5-Minute Quadrangle: Anhalt and Bulverde, TX (1 inch = 2,000 feet)
- 1953, 7.5-Minute Quadrangle: Anhalt and Bulverde, TX (1 inch = 2,000 feet)
- 1967, 7.5-Minute Quadrangle: Anhalt and Bulverde, TX (1 inch = 2,000 feet)
- 1973, 7.5-Minute Quadrangle: Anhalt and Bulverde, TX (1 inch = 2,000 feet)
- 1988, 7.5-Minute Quadrangle: Anhalt and Bulverde, TX (1 inch = 2,000 feet)
- 2010, 7.5-Minute Quadrangle: Anhalt and Bulverde, TX (1 inch = 2,000 feet)
- 2013, 7.5-Minute Quadrangle: Anhalt and Bulverde, TX (1 inch = 2,000 feet)

Copies of these USGS quadrangle excerpts are presented in Appendix A. Observations made by SWCA from the topographic quadrangle maps are presented in Table 2.2.

Table 2.2. Historic Topographic Map Review of the Subject Property

Quadrangle Date	Observations
1929	Little to no development is present in the surrounding area. There are two buildings mapped to the northeast of the subject property. This quad shows some unimproved roads in the area as well. A tributary to Cibolo Creek enters the subject property from the northwest and runs south Two cemeteries are mapped near the subject property.
1953	Some residential roads are visible to the northeast of the subject property north of FM 1863 and Smithson, near the eastern extent of the quad. The number of unimproved roads in the vicinity has increased, though no major changes in land use are noted. Based on the regular shapes of the vegetation, it is assumed that land in the areas was used for agriculture, including livestock grazing. The majority of the subject property is mapped as vegetated. Only one cemetery is mapped adjacent to the subject property. An additional waterway flows into the subject property from the north.
1967	This quadrangle displays few changes on the subject property and surrounding area from the 1953 quadrangle. FM 1863 is mapped as a secondary highway. Two gravel pits are mapped in the vicinity of the subject property, one to the northwest and one to the southeast.
1973	This quadrangle shows minimal changes from the previous quadrangle. Mainly, residential development has increased west of the subject property, and there are now two gravel pits to the southeast.
1988	There are no notable changes to the subject property and surrounding area.
2010	This quadrangle shows minimal changes from the previous quadrangle. Mainly, the unimproved roads in the surrounding area are mapped as light duty roads, most likely due to a slight increase in development.
2013	There are no notable changes to the subject property and surrounding area.

2.5.2 Review of Aerial Photographs

Aerial photographs were reviewed to investigate historical subject property and adjacent land uses and to observe potential impacts to the subject property. The dates, sources, and scales of the aerial photographs reviewed are as follows:

- 1955, Agricultural Stabilization and Conservation Service (1 inch = 750 feet)
- 1963, USGS (1 inch = 500 feet)
- 1966, USGS (1 inch = 500 feet)
- 1973, USGS (1 inch = 500 feet)
- 1985, Texas Department of Transportation (1 inch = 500 feet)
- 1995, USGS (1 inch = 500 feet)
- 2004, United States Department of Agriculture (USDA) (1 inch = 500 feet)
- 2008, USDA (1 inch = 500 feet)
- 2012, USDA (1 inch = 500 feet)

Copies of these aerial photographs are included in Appendix B. SWCA's observations from reviewing the aerial photographs are presented in Table 2.3.

Table 2.3. Historic Aerial Photograph Review of the Subject Property

Quadrangle Date	Observations Due to the poor quality of this photograph, the only land use noted is agriculture based on the cleared fields along Cibolo Creek. Wooded or scrubby areas line ridges and drainages farthe from the creek. The subject property as depicted in the 1955 photograph does not appear to support the riparian area that it does currently.		
1955			
1963	There are no notable changes to the subject property and surrounding area.		
1966	There are no notable changes to the subject property and surrounding area.		
1973	Vegetation density and land use appear relatively unchanged in the surrounding area, aside from thinning of wooded areas. There are no notable changes to the subject property.		
1985	Vegetation density and land use appear relatively unchanged in the surrounding area. Vegetat within the subject property appears denser than in previous years.		
1995	Vegetation density and land use appear relatively unchanged within the subject property and t surrounding area.		
2004	There are no notable changes to the subject property, though land clearing occurs to the west (possible gravel pit as mapped on the USGS quadrangles).		
2008	Vegetation density and land use appear relatively unchanged within the subject property and the surrounding area. The land to the west is cleared for construction of the school buildings.		
2012	Vegetation density and land use appear relatively unchanged within the subject property and th surrounding area. The school has been built west of the subject property.		
te: While the in	land has begun to revegetate. tervals between aerial photographs span several years, the land use did not change significantly. information is not considered a data gap.		

2.5.3 Fire Insurance Maps

Fire insurance maps were not requested from Banks since land use of the surrounding area was easily gathered from historic aerial photographs, and fire insurance data are not expected to be available for this rural area.

2.5.4 City Directories

A historical tenant search of city directories was not requested from Banks due to the rural nature of the subject property. The subject property has no tenants; however, the remainder of the property may be leased or rented.

2.5.5 On-Site Potential Recognized Environmental Conditions

Based on historical aerial coverage, topographic maps, and other sources of on-site information mentioned in Section 2.5, no evidence for sources of on-site recognized environmental conditions was identified.

2.5.6 Off-Site Potential Recognized Environmental Conditions

Based on a review of historical aerial photographs, historical topographic quadrangles, and other sources of off-site information, no evidence for sources of off-site recognized environmental conditions was identified.

3.0 USER PROVIDED INFORMATION

3.1 TITLE RECORDS

The details of the most recent deed transfer for each parcel, according to the Chain-of-Title Reports provided by Banks, are provided in Table 3.1. A copy of the chain-of-title information is included in Appendix C.

Table 3.1. Subject Property Parcel Title Records

Property ID	Deed Transfer Date	Grantor(s)	Grantee
75111	July 25, 1997	Joyce Lux; Patricia Lux Graham (individually and as trustee for Coquina Annette Dunn and Asa Edward Dunn); Asa Edward Dunn and Coquina Annette Dunn	Margie Hastings
75118	July 25, 1997	Joyce Lux, Asa Edward Dunn, Coquina Annette Dunn, and Margie Hastings	Patricia Lux Grahan

3.2 Environmental Liens or Activity and Use Limitations

An environmental lien search was performed by Banks and revealed there are no environmental liens or activity use limitations associated with either of the parcels that constitute the subject property. The environmental lien search is conducted in conjunction with the chain-of-title search and results are included in Appendix C.

3.3 SPECIALIZED KNOWLEDGE

It is the ESA User's responsibility to communicate information pertaining to the existence of known, recognized environmental conditions on the subject property. Mr. Tracy Bratton of Bowman Consulting, engineer for Johnson Ranch MUD, completed the User Questionnaire. Mr. Bratton indicated that he has no specialized knowledge of the subject property. The completed User Questionnaire is included in Appendix D.

3.4 COMMONLY KNOWN OR REASONABLY ASCERTAINABLE INFORMATION

The ESA User is also responsible for communicating any commonly known information within the community that could be material to the existence of recognized environmental conditions associated with the subject property. In the User Questionnaire, Mr. Bratton did not indicate awareness of any commonly known issues. The completed User Questionnaire is included in Appendix D.

3.5 VALUATION REDUCTION FOR ENVIRONMENTAL ISSUES

Based upon information provided by Mr. Bratton concerning the subject property in the User Questionnaire, there is no environmentally-based property valuation reduction for the referenced property. The completed User Questionnaire is included in Appendix D.

3.6 OWNER, PROPERTY MANAGER, AND OCCUPANT INFORMATION

This property consists of portions of two land parcels held by two separate landowners, totaling approximately 9 acres of agricultural upland and an intermittent drainage (see Table ES 1.1, Figure 2).

3.7 REASON FOR PERFORMING THE PHASE I ESA

This Phase I ESA was performed to identify, to the extent feasible pursuant to the processes outlined in ASTM document E1527-13, recognized environmental conditions associated with use of the subject property as a drainage easement and the associated alteration.

4.0 RECORDS REVIEW

Banks provided the Regulatory Database Report dated June 16, 2014, provided in Appendix E. This report contains a review of several U.S. Environmental Protection Agency (EPA) and Texas Commission on Environmental Quality (TCEQ) electronic databases and provides the locations and names of sites with reported incidents of hazardous waste releases and other issues. SWCA reviewed regulatory database information regarding the spill or potential presence of hazardous waste on facilities and/or properties within the ASTM-mandated search radii of the subject property. The regulatory database search was conducted from the subject property boundary. The specific databases reviewed, and the information obtained from them, are provided in the following paragraphs.

4.1 FEDERAL REGULATORY DATABASES

4.1.1 National Priority List

The National Priority List (NPL) is the EPA's database of uncontrolled or abandoned hazardous waste sites identified for priority remedial actions under the Superfund Program. A site must meet or surpass a predetermined Hazardous Ranking System score, be chosen as a state's top priority site, or meet three specific criteria set jointly by the U.S. Department of Health and Human Services and the EPA in order to become an NPL site. The search radius for NPL sites is 1 mile.

No sites were identified within 1 mile of the subject property boundary.

4.1.2 National Priority List Delisted

The NPL Delisted is composed of delisted Superfund sites as described in Section 4.1.1. The search radius for NPL sites is 0.5 mile.

No sites were identified within 0.5 mile of the subject property boundary.

4.1.3 Comprehensive Environmental Response, Compensation, and Liability Information System

Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) is the EPA's compilation of sites it has investigated or is currently investigating for the release or threatened release of hazardous substances pursuant to the CERCLA of 1980 (Superfund Act). The search radius for CERCLIS sites is 0.5 mile.

No sites were identified within 0.5 mile of the subject property boundary.

4.1.4 Comprehensive Environmental Response, Compensation, and Liability Information System – No Further Remedial Action Planned

CERCLIS sites designated as No Further Remedial Action Planned (NFRAP) are those that have been removed from CERCLIS. These sites, following an initial investigation, are sites where no contamination was found, contamination was removed quickly without the need for the site to be placed on the NPL, or the contamination was not serious enough to require federal Superfund action or NPL consideration. The search radius for NFRAP sites is 0.5 mile.

No sites were identified within 0.5 mile of the subject property boundary.

4.1.5 Resource Conservation and Recovery Act Corrective Action Sites

The EPA's Resource Conservation and Recovery Act (RCRA) Corrective Action Sites (CORRACTS) database identifies hazardous waste handlers with RCRA corrective action activity. The search radius for CORRACTS sites is 1 mile.

No sites were identified within 1 mile of the subject property boundary.

4.1.6 Resource Conservation and Recovery Act Information Database – Treatment, Storage, or Disposal

The RCRA Information database includes selective information on sites that store, treat, and/or dispose of hazardous waste as defined by RCRA (RCRA-TSD). The search radius for RCRA-TSD sites is 0.5 mile.

No sites were identified within 0.5 mile of the subject property boundary.

4.1.7 Resource Conservation and Recovery Act Information Database - Generators

The RCRA Information database also includes information on sites that generate or transport hazardous waste or meet other RCRA requirements (RCRA-GEN). It is divided into small quantity generators (SQG) or large quantity generators (LQG). This search includes RCRA Administrative Action Tracking System and Compliance Monitoring and Enforcement List facilities. The search radius for RCRA-GEN sites is 0.25 mile.

No sites were identified within 0.25 mile of the subject property boundary.

4.1.8 Listing of Brownfield Sites

Brownfields are sites currently under the enforcement of the EPA regulated by CERCLA. The search radius for Brownfield sites is 0.5 mile.

No sites were identified within 0.5 mile of the subject property boundary.

4.1.9 Federal Engineering and Institutional Controls

The EPA's Federal Engineering and Institutional Controls database (FED EC and IC) includes information on Superfund sites that have either engineering or an institutional control. The data include the control and the media contaminated. The search radius for this database is 0.5 mile.

No sites were identified within 0.5 mile of the subject property boundary.

4.1.10 Emergency Response Notification System

The EPA's Emergency Response Notification System (ERNS) database records and stores information on reported releases of oil and hazardous substances. The search radius for ERNS sites is 0.25 mile.

No sites were identified within 0.25 mile of the subject property boundary.

4.2 STATE REGULATORY DATABASES

4.2.1 State Superfund Registry

The State Superfund Registry is a list of hazardous waste properties identified by the TCEQ, which may or may not already be included in CERCLIS. The search radius for State Superfund Registry sites is 1 mile.

No sites were identified within 1 mile of the subject property boundary.

4.2.2 Solid Waste Facility Database

The TCEQ's Central Registry contains an inventory of solid waste landfills (SWLF), transfer stations, and incinerators. These sites may be active or inactive. The search radius for SWLFs is 0.5 mile.

One mapped site and four unmapped SWLFs were identified within 0.5 mile of the subject property boundary.

Based on a review of the Banks Regulatory Database report and TCEQ Central Registry, the mapped SWLF site is operated by Geosource (also known as Wagner Materials) and is located 0.27 mile east of the subject property on the south side of FM 1863. According to the Regulatory Database Report, the facility is an active recycling and recovery facility (5RR). The permit was issued in December 2008. According to the Central Registry, this site is also classified under construction sand and gravel and therefore, is likely one of the gravel pits that was mapped by the USGS southeast of the subject property.

The unmapped sites are all closed, unauthorized/non-permitted sites. No information is available, aside from their site or operator names: Round Road Landfill, Saunders, Steve Dump, and Brown Dump. A review of historical aerial photography did not reveal potential locations for these sites.

4.2.3 Leaking Underground Storage Tank Database

The TCEQ maintains records of properties organized by owners and operators, of underground storage tanks (USTs) in which spills or overfills of petroleum or related products have resulted in releases to the environment. Data within this database include the substance of contamination and the status of the leak or contamination. The search radius for leaking petroleum storage tanks (LPSTs) is 0.5 mile.

No LPST sites were identified within 0.5 mile of the subject property boundary.

4.2.4 Underground Storage Tank and Aboveground Storage Tank Database

Aboveground storage tanks (ASTs) and USTs are regulated under RCRA and must be registered with the TCEQ. This database consists of all petroleum storage tanks (PSTs) registered with the TCEQ. The search radius for underground and aboveground PSTs is 0.25 mile.

One unmapped, inactive PST site was identified within 0.25 mile of the subject property boundary. Facility No. 0017330 is owned by American Tower Corporation (TCEQ Customer ID 055730) and is located 1 mile south of Smithson. Two 2,000-gallon diesel underground storage tanks were removed from the ground. Tank No. 1A was installed in January 1991 and removed in May 2004. Tank No. 1B was installed in January 1968 and removed in May 1991.

4.2.5 Engineering and Institutional Control Database

The Institutional Control (IC) database lists sites in the Voluntary Cleanup Program (VCP) and the Innocent Owner/Operator Program (IOP) where Institutional or Engineering Controls (ECs) have been placed on them. The search radii for ICs and ECs are 0.25 mile and 0.5 mile, respectively.

No IC sites were identified within 0.25 mile of the subject property boundary. No EC sites were identified within 0.5 mile of the subject property boundary.

4.2.6 Voluntary Cleanup Program Database

The VCP was established to provide administrative, technical, and legal incentives to encourage the cleanup of contaminated sites in Texas. This database includes all companies or individuals that have signed up for the program. The search radius for VCP sites is 0.5 mile.

No sites were identified within 0.5 mile of the subject property boundary.

4.2.7 Brownfields

The TCEQ Brownfields database lists all former industrial properties that lie dormant or underutilized due to liability associated with real or perceived contamination. The search radius for brownfields is 0.5 mile.

No sites were identified within 0.5 mile of the subject property boundary.

4.2.8 Texas Industrial Hazardous Waste Notice of Registration

This database contains information that tracks industrial and hazardous waste generation and management activities. All information is submitted by industrial and hazardous waste transporters, receivers, and generators, and for one-time shipments. The search radius for these activities is 0.25 mile.

One unmapped, inactive site (Register No. 69056, EPA ID TXD980598486) was identified within 0.25 mile of the subject property boundary. This site, owned by the American Telephone and Telegraph Company (AT&T), was classified as a generator and located on a rural route in Bulverde. More specific location information was not available.

4.2.9 State Oil/Gas Well Information

The Texas Railroad Commission (TRRC) interactive geographic information system (GIS) database contains listings of completions, plugging, and permits for oil/gas wells. Banks obtained the data on June 16, 2014.

No petroleum well locations were identified within 0.25 mile of the subject property boundary.

4.2.10 State Water Well Information

The Texas Water Development Board (TWDB) maintains an interactive database of current and historic registered water wells. Banks reviewed the most recent interactive TWDB water well database on June 16, 2014.

No water well locations were identified within 0.25 mile of the subject property boundary.

4.2.11 Dry Cleaners

The Dry Cleaners (DRYC) database includes historical listings of any facility that registered with the Dry Cleaners Remediation Program (DCRP) indicating whether or not the facility has used perchloroethylene (PERC). The data come from the TCEQ's DCRP database. The search radius for dry cleaners is 0.25 mile

No sites were identified within 0.25 mile of the subject property boundary.

4.2.12 Resource Conservation and Recovery Act Sites

The RCRA database includes information on sites that generate or transport hazardous waste or meet other RCRA requirements. The search radius for RCRA sites is 0.25 mile.

One unmapped site was identified within 0.25 mile of the subject property boundary. The site is owned by AT&T and is located off of a rural route in Bulverde (EPA Handler ID TXD980598486). This facility shares the same EPA ID as the unmapped, hazardous waste AT&T site discussed in Section 4.2.8. For this search, the site is not listed as a generator of corrosive waste, the hazardous material listed for this site.

4.3 ADDITIONAL ENVIRONMENTAL RECORDS

In addition to the data provided by Banks, SWCA conducted the following research pertinent to the subject property.

4.3.1 Previous Environmental Site Documentation

Mr. Bratton is not aware of any other Phase I ESA having been conducted previously for this subject property and did not provide SWCA with any other previous environmental site documentation.

4.4 SUMMARY OF RECORDS SEARCH

Based on a review of the databases and the information gathered from the Banks Regulatory Database Report, one mapped and four unmapped solid waste landfill sites, one unmapped PST site, one state hazardous waste site, and one unmapped RCRA sites were identified within the search radii of the subject property.

5.0 GEOLOGICAL AND HYDROGEOLOGICAL PROFILE

5.1 TOPOGRAPHY AND ON-SITE SURFACE WATER CHARACTERISTICS

The project area appears on the Anhalt and Bulverde, Texas, USGS 7.5-minute topographic quadrangle maps (USGS 2013). The project area is primarily situated in the uplands overlooking the Cibolo Creek valley floodplain to the south. The overall area slopes southward dropping from 1,220 feet above mean sea level (amsl) at the north end to roughly 1,000 feet amsl on the south end of the project area with an average gradient of 5 percent. The project area begins in the uplands and terminates at FM 1863, which runs along Cibolo Creek (see Figure 1).

5.2 FLOOD POTENTIAL

SWCA reviewed Federal Emergency Management Agency (FEMA) floodplain data for the subject property, which revealed that approximately 4.7 acres of the subject property are within the FEMA-mapped 100-year floodplain (FEMA 2008a and 2008b).

5.3 NEAREST SURFACE WATER BODY

The subject property consists of agricultural upland and an intermittent drainage. Based on a review of topographic quadrangles and aerial imagery, the nearest surface water body to the subject property is Cibolo Creek, south of the easement along FM 1826.

5.4 SITE PROXIMITY TO WETLANDS

An examination of the aerial photos and review of the U.S. Fish and Wildlife Service National Wetland Inventory data indicate no wetlands exist within the subject property (USFWS 2014). However, there is a freshwater pond signature approximately 420 feet west of the subject property, located adjacent to the school driveway. It is described as temporarily flooded during the growing season, though the water table likely lies well below the soil surface. Historically, it appears to have been excavated by humans for water storage and may be used as a retention basin in the future.

5.5 REGIONAL SOIL CHARACTERISTICS

There are three soil units mapped within the subject property as mapped by the U.S. Department of Agriculture Natural Resources Conservation Service (USDA NRCS 2014).

- Krum clay, 1–3 percent slopes (KrB)
- Gruene clay, 1–5 percent slopes (GrC)
- Sunev silty clay loam, 0-1 percent slopes (SuA)

5.6 REGIONAL GEOLOGY

The Project Area is underlain by the early Cretaceous-age Glen Rose Formation. These deposits consist mainly of limestone with clay and some silty clay roughly 800 feet thick (Barnes 1983).

5.7 REGIONAL GROUNDWATER CHARACTERISTICS

The subject property lies over the Trinity Aquifer, a major aquifer, which extends from Central Texas to the northeastern part of the state (TWDB 2014). The Trinity Aquifer is composed of several smaller aquifers, consisting of limestones, sands, clays, gravels, and conglomerates. In Central Texas, freshwater saturated thickness averages about 1,900 feet.

The TWDB indicates that there no groundwater wells within or adjacent to the subject property (2014). Generally, wells drilled in the surrounding area average 400 to 500 feet deep.

6.0 SITE INSPECTION

6.1 SITE RECONNAISSANCE

A site reconnaissance was conducted on June 18, 2014, by an SWCA environmental specialist. The purpose of the inspection was to determine whether or not visible evidence of any recognized environmental conditions existed adjacent to or on the subject property. Photographic documentation of the site reconnaissance on the subject property is included in Appendix F.

6.1.1 Subject Property Overview

The subject property is an approximately 9-acre property located to the northeast of Bulverde in southern Comal County, Texas (see Figure 1). The surrounding area is mainly rural, agricultural land to the east and south, while an operational school and active construction of residential properties are present to the north and west.

6.1.2 Access to the Site

The subject property was accessed via a private driveway north of FM 1863 and then through the pasture gate (see Figure 2).

6.1.3 Vegetation

Aside from the narrow strip of herbaceous grassland vegetation along the eastern side of the subject property, the main plant community within and adjacent to the drainage consists of trees and shrubs including live oak (*Quercus fusiformis*), cedar elm (*Ulmus crassifolia*), Texas persimmon (*Diospyros texana*), agarita (*Mahonia trifoliolata*), and Texas wintergrass (*Nassella leucotricha*) (Appendix F).

6.1.4 Wetlands and Water Bodies

Based on a review of the aerial photographs and the site reconnaissance, no wetlands were identified within the subject property.

6.1.5 Drainage Channels

Based on a review of the topographic maps, aerial imagery, and the site reconnaissance, SWCA identified the one drainage channel that constitutes the majority of the subject property (see Figure 2). Upstream of the subject property, this channel has been altered for agricultural purposes.

6.1.6 Railroads

There are no railroads located on the subject property.

6.1.7 On-Site Utilities

No electrical transmission lines are present on the subject property; however, transmission lines do run parallel to FM 1863 and provide power to adjacent properties. City water supply lines and sanitary sewer lines were not observed within the subject property.

6.1.8 Buildings and Ruins

No building or ruins were present within the subject property.

6.1.9 Heavy Duty Equipment

There was no evidence of operational heavy-duty equipment on the subject property.

6.1.10 Obvious Odors

No obvious odors were detected on the subject property.

6.1.11 Evidence of Landfills, Dumping, or Burial Activities

Evidence of dumping was present within the subject property. Miscellaneous materials have been dumped along the high eastern bank of the drainage for several decades, based on the age of some of the appliances. Discarded materials include lumber, plywood, corrugated metal, construction debris, scraps of hard plastic, old appliances, farming equipment, fiberglass boat, metal pipes, rusted wire, concrete chunks, small, rusted motors, water heater, portable propane tank, aluminum cans, and numerous used vehicle oil filters (Figures F-8 through F-13, Appendix F). Based on the dumpsite's location near the drainage channel, there is potential for transportation of contamination downstream. This potential is considered to be a *de minimis* condition.

No evidence of landfill or burial activities was identified on the subject property. However, there is a cemetery adjacent and to the east of the subject property.

6.1.12 Evidence of Surface Impoundments or Holding Ponds

No surface impoundments or holding ponds were identified on the subject property. However, the washed-out, manmade, earthen dam near the northern end of the subject property suggests water may have been purposely contained in this area at one time.

6.1.13 Evidence of Air Emissions or Wastewater Discharge

No evidence of air emissions or wastewater discharge was observed on the subject property during the reconnaissance.

6.1.14 Evidence of Industrial or Manufacturing Activities

No evidence of industrial or manufacturing activities was identified on the subject property.

6.1.15 Monitoring Wells or Evidence of Remedial Activities

No monitoring wells or evidence of remedial activities was identified on the subject property.

6.1.16 Evidence of Leachate to Seeps

No evidence of leachate to seeps was identified on the subject property.

6.1.17 Evidence of Distressed, Discolored, or Stained Vegetation or Soil

No evidence of distressed, discolored, or stained vegetation or soil was identified on the subject property.

6.1.18 Evidence of Chemical Spills or Releases

No evidence of chemical spills or releases was identified on the subject property.

6.1.19 Evidence of Groundwater and Surface Water Contamination

No evidence of groundwater or surface water contamination was specifically identified on the subject property. However, there is potential for past or future surface water contamination due to the proximity to the active construction site to the north and northwest. At the northern end of the subject property, failed sediment control measures, or lack thereof, will not prevent off-site discharges. In addition, there is a pre-existing stormwater drainage that flows from the west into the drainage within the subject property (Figure F-6, Appendix F). From historical imagery, it appears that this channel may have, and may currently, drain contaminated stormwater from the impervious cover at the school. This concern is also

discussed in Section 6.1.21 below. The presence of these off-site sources and the potential for transportation of contamination onto the subject property are considered de minimis conditions.

6.1.20 Oil or Gas Well Exploration, Production, or Refinery Activities

No oil or gas well exploration, production, or refinery activities were observed on the subject property.

6.1.21 Discharges, Leachate, Migration, or Runoff of Potential Contamination from Off-Site Sources

While no evidence of discharges, leachate, migration, or runoff of potential contamination from off-site sources was specifically identified on the subject property, the construction site to the north and preexisting stormwater drainage to the west may introduce potential contamination from off-site sources and are, therefore, considered de minimis conditions, as discussed in Section 6.1.19.

6.1.22 Evidence of Farm Waste

No evidence of farm waste was identified on the subject property.

6.1.23 Other Known or Observed Environmentally Sensitive Conditions

As mentioned in Section 6.1.12, there is evidence that a manmade, earthen dam was constructed near the northern end of the subject property. This dam was constructed of a soil berm and covered with limestone cobbles for reinforcement and has since washed out (Figures F-3 and F-4, Appendix F). Previous measurements were approximately 20 feet long, 3 feet high, and 6 feet wide. The soil and limestone appear to be native materials, though SWCA did not receive landowner confirmation on the source. No staining, foreign debris, or potential sources of hazardous materials were observed; therefore, the presence of these materials on the subject property is considered to be a de minimis condition.

No other known or observed environmentally sensitive conditions were identified on the subject property during the reconnaissance.

6.1.24 Water Wells and Public Water Supply

No groundwater wells were observed on the subject property during the site reconnaissance.

6.1.25 Aboveground Storage Tank/Underground Storage Tank Systems and Pipelines

No ASTs or USTs were identified on the subject property.

6.1.26 Transformers and Polychlorinated Biphenyl-Contained Equipment

No pole-mounted transformers were observed on the subject property during the site reconnaissance.

6.1.27 Asbestos

A survey for asbestos-containing materials and lead-based paint was not included within the scope of this Phase I ESA. Though no debris typically containing asbestos or lead-based paint or labeled as such was observed on the subject property, there is potential for its presence in material at the dumpsite based on the age of some of the appliances.

6.1.28 On-Site Regulated Substances Identification/Inventory

No regulated substances were identified on the subject property.

6.2 SITE INSPECTION SUMMARY

SWCA conducted an on-site inspection on June 18, 2014. No recognized environmental conditions were identified. However, dumping activities, the presence of fill material, and the potential for contamination from off-site sources were identified as *de minimis* conditions on the subject property (see Figure 2).

6.3 AREA RECONNAISSANCE

A reconnaissance of the area was conducted on June 18, 2014, generally consisting of a drive-by survey of the area within a 1-mile radius. The surrounding area mainly consists of undeveloped agricultural land with single-family residential development and limited commercial development. There are no gas stations or dry cleaners within 1 mile of the subject property boundary. However, as noted in Sections 6.1.19 and 6.1.21, there is potential for sediment and stormwater contamination from the adjacent school and active construction site. No other properties were observed that would appear to have the potential to negatively impact the subject property.

7.0 INTERVIEWS

7.1 INTERVIEWS WITH OWNER/OCCUPANTS

7.1.1 Interview with Owner

The subject property consists of approximately 9 acres composed of two parcels held by Patricia Lux Graham and Margie Hastings (see Table ES 1.1). The Landowner Questionnaire was distributed to the landowners' attorneys; however, no response was received. Copies of the Landowner Questionnaires are included in Appendix D.

7.2 INTERVIEWS WITH THE SITE MANAGER/OCCUPANTS/ADJACENT PROPERTY OWNERS OR OCCUPANTS

7.2.1 Interview with the Site Manager

There is no site manager associated with the subject property.

7.2.2 Interview with Occupants

The subject property is uninhabited.

7.2.3 Interviews with Adjacent Property Owners or Occupants

Since no environmental issues of concern were observed during the area reconnaissance, interviews with adjacent property owners or occupants were not conducted.

7.3 USER INTERVIEWS

The representative for the ESA Users, Mr. Tracy Bratton of Bowman Consulting, engineer for Johnson Ranch MUD, provided User Questionnaire responses. Mr. Bratton did not indicate awareness of environmental issues on the subject property. A copy of the responses is included in Appendix D.

7.4 INTERVIEWS WITH GOVERNMENTAL AGENCIES

An interview with the Fire Chief of the local fire department, the Bexar-Bulverde Volunteer Fire Department, was attempted on July 2, 2014; however, no response to the voicemail was received. On July 7, 2014, SWCA attempted to reach both the Fire Chief and Assistant Fire Chief but did not receive a returned call.

8.0 FINDINGS

This section documents SWCA's findings of a Phase I ESA conducted for Bowman Consulting, on behalf of Johnson Ranch MUD, on the approximately 9-acre easement located northeast of Bulverde in southern Comal County, Texas, referred to as the subject property. Any exceptions to, or deletions from, standard practices are described in Section 8.6 of this report.

8.1 RECOGNIZED ENVIRONMENTAL CONDITIONS

SWCA did not identify any recognized environmental conditions on the subject property.

8.2 HISTORICAL RECOGNIZED ENVIRONMENTAL CONDITIONS

SWCA did not identify any historical recognized environmental conditions on the subject property.

8.3 DE MINIMIS CONDITIONS

SWCA identified three de minimis conditions on the subject property (see Figure 2):

- Evidence of dumping activities
- Presence of fill material
- Runoff of potential contamination from off-site sources

8.4 DATA FAILURE AND DATA GAPS

The Sanborn Fire Insurance Map Search and City Directory Search were not performed for the subject property. Due to the historically rural nature of the property, tenant directory information was not anticipated to be available.

The Landowner Questionnaire was distributed to the landowners' attorneys in mid-June 2014. However, no response has been received by the time this report was completed.

There were no other data failures or data gaps associated with the information gathered and summarized within this Phase I ESA.

8.5 SPECIAL TERMS AND CONDITIONS

This document was prepared for the sole use of Bowman Consulting and Johnson Ranch MUD. No other party should rely on the information contained herein without prior written consent from SWCA and Bowman Consulting. The ESA activities were conducted in accordance with the contractual agreement between Bowman Consulting and SWCA, and ASTM E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process guidelines. Our professional judgment to assess the potential for contamination is based on limited data; no other warranty is given or implied by this report.

8.6 EXCEPTIONS OR DELETIONS FROM ASTM E1527-13 STANDARD PRACTICE

No exceptions to or deletions from the ASTM E1527-13 standard practice occurred during completion of this ESA.

9.0 OPINION AND RECOMMENDATIONS

Based upon the site reconnaissance and a review of all available data for the subject property, SWCA did not identify any recognized environmental conditions on the subject property. No evidence was found of prior hazardous material storage, usage, spillage, or disposal. However, three *de minimis* conditions were identified:

- Evidence of Dumping SWCA identified one dumpsite within the subject property adjacent to the drainage (Figure 2). Discarded materials include lumber, plywood, corrugated metal, construction debris, scraps of hard plastic, old appliances, farming equipment, fiberglass boat, metal pipes, rusted wire, concrete chunks, small, rusted motors, water heater, portable propane tank, aluminum cans, and numerous used vehicle oil filters (Figures F-8 through F-13, Appendix F). There is potential for materials in these dumpsites to contain asbestos or lead-based paint. Should future construction activities affect this dumpsite, these items should be removed and disposed of properly. This item is considered to be a de minimis condition and to have a low level of environmental risk or liability.
- Presence of Fill Material SWCA identified a washed-out earthen dam (originally approximately 20 feet long, 3 feet high, and 6 feet wide) made from what appears to be native soil mixed with limestone cobbles within the northern portion of the subject property (Figure 2; Figures F-3 and F-4, Appendix F). SWCA does not have landowner confirmation on the source of the soil and limestone materials; however, no staining, foreign debris, or potential sources of hazardous materials were observed. Should future construction activities affect this area of the subject property, this material should be removed and disposed of properly. Should future excavation of this material uncover any potentially hazardous material, additional investigation may be required to determine that soils have not been negatively affected. This item is considered to be a de minimis condition and to have a low level of environmental risk or liability.
- Runoff of Potential Contamination from Off-Site Sources SWCA identified two areas with potential to transport sediment and surface water runoff from off-site sources onto the subject property. Failed sediment control measures, or lack thereof, at the construction site at the northern end of the subject property may have allowed off-site discharges to reach the drainage within the subject property (Figure F-2, Appendix F). Also, the pre-existing stormwater drainage that flows into the subject property may transport off-site contamination onto the subject property as well. Should future construction activities affect these areas on the subject property, appropriate sediment and stormwater control measures would need to be implemented to protect the construction crews and surrounding public and prevent soil and water contamination. This item is considered to be a de minimis condition and to have a low level of environmental risk or liability.

No ESA can wholly eliminate uncertainty regarding the potential for recognized environmental conditions to exist in connection with a property. Completion of this Phase I ESA is intended to reduce, but not all together eliminate, uncertainty regarding the presence of recognized environmental conditions in connection with the subject property.

10.0 CONCLUSIONS

"We have performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E1527-13 of approximately 9 acres of agricultural upland and an intermittent drainage in Comal County, Texas, the subject property. Any exceptions to, or deletions from, this practice are described in Section 8.6 of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property."

11.0 ENVIRONMENTAL PROFESSIONAL STATEMENT

"I declare that, to the best of my professional knowledge and beliefs, I meet the definition of *Environmental Professional* as defined in §312.10 of 40 CFR 312, and I have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property (see Appendix G for a summary of qualifications). I have developed and performed all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312."

Christine Westerman Senior Project Manager

12.0 REFERENCES

- Barnes, V. 1983. University of Texas Bureau of Economic Geology Geologic Atlas of Texas map series, San Antonio Sheet.
- Federal Emergency Management Agency (FEMA). 2008a. Flood Insurance Rate Map, Travis County, Texas and Incorporated Areas. FIRM Panel 48091C0220F. Revised September 2, 2009. Available online at: https://msc.fema.gov/webapp/wcs/stores/servlet/QuickOrderResultView. Accessed on July 7, 2014.
- ______. 2008b. Flood Insurance Rate Map, Travis County, Texas and Incorporated Areas. FIRM Panel 48091C0385F. Revised September 2, 2009. Available online at: https://msc.fema.gov/webapp/wcs/stores/servlet/QuickOrderResultView. Accessed on July 7, 2014.
- Texas Water Development Board (TPWD). 2014. Trinity Aquifer summary. Available online at http://www.twdb.state.tx.us/groundwater/aquifer/majors/trinity.asp. Accessed on July 7, 2014.
- U. S. Department of Agriculture, Natural Resources Conservation Service (USDA NRCS). 2014. Web Soil Survey. Available at: http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm. Accessed July 7, 2014.
- U.S. Fish and Wildlife Service (USFWS). 2014. National Wetland Inventory, Wetlands Mapper. Available online at: http://www.fws.gov/wetlands/Wetlands-Mapper.html. Accessed July 7, 2014.
- U.S. Geological Survey (USGS). 2013. Anhalt and Bulverde, Texas, 7.5-minute quadrangle. Scale 1:24,000.

Mon Feb 09 10:31:15 EST 2015 Leavy.Jacqueline@epamail.epa.gov FW: Notice of Intent to Sue To: CMS.OEX@epamail.epa.gov

From: Terrell Graham [mailto:tgraham192@gmail.com]

Sent: Saturday, February 07, 2015 12:40 AM

To: Mccarthy, Gina; Curry, Ron Cc: alan.glen@sedgwicklaw.com Subject: FW: Notice of Intent to Sue

Dear Ms. McCarthy and Mr. Curry:

In reviewing this I realized that I should have included you in the below email. Please forgive this oversight. The attached letter was sent to you as well.

Sincerely,

Terrell Graham

From: Terrell Graham [mailto:tgraham192@gmail.com]
Sent: Friday, February 06, 2015 7:25 PM
To: 'commissr@tceq.texas.gov'; 'execdir@tceq.texas.gov'

Cc: 'alan.glen@sedgwicklaw.com'

Subject: Notice of Intent to Sue

Gentlemen:

This email is to set the record straight. The attached letter was sent to the TCEQ on January 28, 2015 is a low, cowardly, defamatory attempt at impugning the character of my wife and I. This type of nonsense has continued unchecked for approximately a year. Below are some examples of the nature of the attached letter (CWA DHJB.pdf). We have several matters pending before the TCEQ and will not allow this type of baseless attack to continue unchecked.

One of the more ridiculous statements in the letter is, "In addition the Grahams have dumped trash (used oil filters, rusting appliances and other waste) in and along the banks of Unnamed Tributary 21 where it presents and ongoing threat to "water of the United States"."

- 1. The photographs in Exhibit B are not on our property. They are several hundred feet south of property. The report that the photographs came from clearly indicates the location of the photographs. The report also states that the dumpsite on our neighbor's property is a "de minimus condition". In addition, when referring to dam for our stock pond it is stated in the report that, "SWCA identified a washed-out earthen dam (originally approximately 20 feet long, 3 feet high, and 6 feet wide) made from what appears to be native soil mixed with limestone cobbles within the northern portion of the subject property (Figure 2; Figures F-3 and F-4, Appendix F). SWCA does not have landowner confirmation on the
 - source of the soil and limestone materials; however, no staining, foreign debris, or potential sources of hazardous materials were observed." SWCA also states that this is a "de minimus condition". The SWCA report is attached without appendices, we were not given them.
- 2. These items were most likely placed there by my father-in-law more than 25 years ago. He passed away in 1993. He was a master plumber and had a plumbing business. He was ill for the last several years of his life. My wife and I have owned our property since 1997. We have not done anything with our property except lease it to a rancher for grazing and hay. We most certainly have never dumped anything on our property or the property of our neighbor to the south. For most of the last 25 years we have lived at least two hours from the subject property. In order to dump anything there we would have had to drive by any number of dumps and recycling centers to dump anything on our property or our neighbor's property. This is an absurd and ridiculous proposition.
- 3. The correct designation of the channel in the area where these pictures were taken is Cibolo Tributary 20 on FEMA Flood Information

Rate Map.

It is a good idea to have at least one of the facts straight before making such a wild, defamatory allegation.

It is also stated in the attached letter that, "The Graham Dam was constructed by Terrell Graham without approval of authorization from the Texas Commission on Environmental Quality, the United States Army Corps of Engineers, Comal County, or the City of Bulverde." This is far from the first time this allegation has been made.

- In regards to approval and authorization from the TCEQ. The pictures in Exhibit C were taken by the TCEQ South Texas Watermaster
 or his deputy on April 14, 2014. I met them at our property at the South Texas Watermaster's request. He wanted to see and measure
 the stock pond to ensure laws had not been violated.
- 2. In regards to approval or authorization by the Army Corps of Engineers, it is notable that they were not copied with the attached letter. Further, documented proof exists that I began contacting the Corps about constructing the stock pond in December 2013. The Corps has been well aware of the existence of the stock pond since it was constructed. In fact the developer sent pictures of the stock pond being constructed to the Corps. Per discussions with the Corps, 0.1 acre must be dredged or filled before an individual permit is necessary. Using SWCA's measurements from above, the dam is 6 feet wide by 20 feet long, 120 square feet of fill. An acre of land is 43,560 square feet. This makes the fill area less than 0.003 acre. This might be a slightly credible argument if it were not coming from a developer that has dredged or filled large portions of Cibolo Tributary 21 without any permits. Apparently the developer feels that the need for dredge and fill permits stops at their property line.
- 3. I have been in regular contact with the City of Bulverde and Comal County. Both are aware of the stock pond and neither has indicated that I have violated city or county rules or laws.
- In an abundance of caution, I also contacted the San Antonio River Authority and the Guadalupe Blanco River Authority before constructing the stock pond.

All of the above is part of testimony in a contested case hearing regarding the developer. There are many more unsupported, defamatory allegations in the attached letter. The two examples above should be more than enough to discredit this letter in its entirety.

We are in fact guilty of a very serious crime. We are trying to protect property that our family has owned for over 110 years. We are not guilty of nor have we be charged with any violation of law. For the last year the developer has made statements in writing to the TCEQ alleging among other things that we are trying to extort money from them. We are not looking for any payday. The Commission can test the validity of this statement by simply denying the developers application for major amendment to their wastewater permit. We would be out a great deal of money without any way to recoup it. The developer would be forced to do what they told the community they would do, dispose of their wastewater effluent on their own property. We would like nothing more than the developer develop their property without any impacts on us or the Edwards/Trinity Aquifer. Why the developer feels that we must accept the consequences of their development choices remains a mystery to us. In general people usually engage in these types of tactics when they know they are in the wrong, and they are losing on multiple fronts. In other words the attached letter from the developer is nothing more than an act of desperation, a very empty threat.

Sincerely,

Terrell Graham

361-443-8971